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FISCAL IMPACT STATEMENT

LS 6739

BILL NUMBER: HB 1092

NOTE PREPARED: Dec 20, 2004

BILL AMENDED:

SUBJECT: Bail Procedure.

FIRST AUTHOR: Rep. Frizzell

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It specifies that a court may require a defendant to execute bail bonds written only by an insurer.
- B. It provides that if a defendant is charged with a misdemeanor and is a resident of Indiana, the court may require the defendant to execute a bail bond by depositing cash or securities in an amount not less than 10% of the bail.
- C. It provides that if a defendant is charged with a felony or is not a resident of Indiana, the court may require the defendant to: (1) execute a bail bond secured by real estate; or (2) execute a bail bond by depositing cash or securities in an amount not less than 25% of the bail.
- D. It requires a defendant admitted to bail to pay a \$20 fee.
- E. It requires: (1) 50% of the fee to be deposited in a county's supplemental public defender services fund; and (2) 50% of the fee to be credited to a county jail improvement account in the county general fund.
- F. It establishes a procedure for the default of bail bonds and cash and securities used as bail.
- G. It provides that certain persons are not eligible to post bail by depositing cash or securities.

Effective Date: July 1, 2005.

Explanation of State Expenditures:

Explanation of State Revenues: *Provision E* would result in a loss to the Common School Fund if assets and other deposits that are defaulted – rather than forfeited – no longer are deposited in the Common School Fund but instead are deposited in the general fund in the county in which the court is located. The revenue loss to

the Common School Fund is not determinable. (See *Explanation of Local Revenues*.)

Explanation of Local Expenditures: Depending on the number of criminal defendants, their residential status, and their ability to pay any additional fees that this bill requires, this bill could increase the number of criminal defendants who are held in county jails awaiting trial. The percentage of criminal defendants who are unable to pay the higher fees and be required to remain in jail prior to trial is not known. The average cost per day is approximately \$44.

Between CY 2001 and 2003, the Department of Correction (DOC) reports the following information concerning county jails in Indiana.

Inmates Identified in County Jails by DOC Jail Inspectors						
Calendar Year	2001		2002		2003	
Felony Offenders Under DOC Contract	1,651	12.6%	1,615	11.8%	1,527	10.6%
Sentenced as Misdemeanant	3,128	23.8%	3,515	25.6%	2,623	18.2%
Criminal Defendants Awaiting Trial	8,374	63.7%	8,575	62.6%	10,302	71.3%
Offenders in County Jails	13,153	100.0%	13,705	100.0%	14,452	100.0%

During CY 2003, DOC reported that of the 39 counties that were either at or greater than jail capacity, the percent of inmates in county jails who awaited trial ranged from 22% to 100%.

Explanation of Local Revenues: *Provisions B, C, and F:* These provisions could increase the revenue that the county collects if the clerk may retain a larger amount of the deposit to pay for fines, costs fees, and restitution depending on the defendant's ability to pay.

Under current law, the court may set bail for a person accused of either misdemeanors or most felonies and allow this person to deposit cash or securities for 10% of the established bail with the clerk of the court. If the person is found not guilty, then the court may charge a \$50 administrative fee. If the person is convicted, the court may retain all or a portion of the cash or securities to pay all of the fines. The clerk is also required to retain from the deposit any additional amounts to pay for fines, fees, restitutions, and publicly paid costs of legal representation.

The following table describes the changes proposed by this bill.

<u>Residency Status</u>	<u>Criminal Charge/Prior Offense</u>	<u>Proposed</u>
Resident	Misdemeanor	10% cash bond and \$20 fee or bail bond and \$20 fee
Resident	Nonviolent felony	Real estate bond and \$20 fee or 25% cash bond and \$20 fee or bail bond and \$20 fee
Nonresident	Misdemeanor	Real estate bond and \$20 fee or 25% cash bond and \$20 fee or bail bond and \$20 fee
Nonresident	Nonviolent felony	Real estate bond and \$20 fee or 25% cash bond and \$20 fee or bail bond and \$20 fee
Resident and Nonresident	Violent felony	Bail bond and \$20 fee only
Resident and Nonresident	Failed to appear in any court in any jurisdiction in past 5 years	Bail bond and \$20 fee only
Resident and Nonresident	Prior felony conviction in past 5 years	Bail bond and \$20 fee only
Resident and Nonresident	Currently released from custody from any jurisdiction on any charge	Bail bond and \$20 fee only
<i>Note: Current law allows for either bail bond or 10% cash bond regardless of residency status or criminal charge.</i>		

Depending on the status of the defendant and the actions of the court, a larger deposit could result in larger amounts retained by the clerk when a defendant is convicted of a felony because the clerk would be able to recover added revenue from fees, fines, and any costs of publicly paid legal representation during court proceedings.

The following table shows the collections from the Bond Administration Fees for the past six calendar years.

Bond Administration Fee Revenues						
CY	1998	1999	2000	2001	2002	2003
Trial Courts	\$1,018,571	\$983,253	\$1,133,952	\$1,212,065	\$1,349,972	\$1,388,563
City & Town Courts	167,152	109,499	144,573	250,838	225,851	202,512
Total Revenue Collected	\$1,185,723	\$1,092,752	\$1,278,525	\$1,462,903	\$1,575,823	\$1,591,075

Provision D – New \$20 Fee: The \$20 fee that would be collected by the courts will depend on the number of bail bonds that are posted with the clerks. There are no published figures on the number of bail bonds or cash or security deposits that are posted for pretrial release in a year. Proceeds from this fee would be split between the supplemental public defender services fund and a separate account in the county general fund for jail improvements.

Provision E: Potential Revenue Increase to the County General Fund -- This provision potentially increases

the amount of revenue deposited in the general fund in the county that the court is located. Under current law and by state constitution, criminal defendants awaiting trial can be released from jail by depositing 10% of a bond with the clerk of the court. If they fail to appear in court, they default on the 10% deposit and any assets that are placed with the court to ensure that the defendant will appear before the court at trial. All forfeitures are deposited in the Common School Fund. As proposed, defendants would default both the 10% deposit and the remaining bail that would be deposited, and all forfeited assets would be deposited in the county general fund in the county where the court is located.

As an example, under current law, a defendant who has bail set at \$1,000 would be permitted by the court to deposit 10% (or \$100) or 25% (or \$250) of the bail amount with the clerk of the court. If the defendant fails to appear in court when ordered to do so, the clerk of the court retains the deposit until it determines whether the crime victim files a civil lawsuit against the defendant based on the crime for which the defendant has been accused. If no civil lawsuit is filed, then the deposit is forfeited and deposited in the Common School Fund.

As proposed, if the defendant fails to appear in court, both the 10% deposit (\$100) and the remaining bail (in this case \$900) would be available in a civil lawsuit. The defendant would be responsible for producing the remaining \$900. If no civil lawsuit is filed, then both the 10% deposit and the remaining bail would be forfeited and deposited in the general fund of the county in which the court is located.

The number of civil actions that result from crime victims filing claims against alleged perpetrators is not known.

Provision F – Restrictions on Cash Deposit With Clerk: Defendants who are currently released from custody from any jurisdiction on any charge, who failed to appear in court within the preceding five years, or who have been convicted of a felony in the previous five years, would not be permitted to deposit money with the clerk of the court. They would be restricted to using a bail bond agent in order to secure pretrial release.

If a criminal defendant executes bail with a bail bondsman and fails to appear in court, a Late Surrender Fee (based on a percentage of the value of the bond) is assessed against the bondsman. Half of the revenue from the Late Surrender Fee is deposited in the Police Pension Trust Fund, and the other half is deposited in a County Extradition Fund. This bill potentially increases revenue from the Late Surrender Fee if more criminal defendants use a bail bondsman and fail to appear in court due to the potential increase in number of bail bonds issued.

Local governments reported receiving the following amounts from the Late Surrender Fee between CY 1998 and CY 2003.

Revenue From Late Surrender Fees						
CY	1998	1999	2000	2001	2002	2003
Trial Courts	\$739,321	\$820,023	\$1,041,349	\$588,100	\$580,776	\$526,716
City & Town Courts	10,528	11,665	16,568	128,923	235,834	242,468
Total Revenue Collected	\$749,849	\$831,688	\$1,057,917	\$717,023	\$816,610	\$769,184

State Agencies Affected:

Local Agencies Affected: Trial courts, county jails.

Information Sources: *Indiana Judicial Service Reports*, 1998 through 2003.

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